

EXHIBIT D

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June 15, 1999

VIA FACSIMILE

John F. Cove, Jr., Esq.,
United States Department of Justice,
325 Seventh Street, N.W.,
Room 615,
Washington, DC 20530.

Re: *United States v. Microsoft*

Dear John:

Let me begin my response to your second letter of today by correcting one of its more obvious errors. I did not say that Microsoft had not "had sufficient time to prepare [a] privilege log." What I said was that it was unreasonable for you to wait more than two months after the documents had been produced to demand a privilege log, to do so in the middle of the trial (and with about a week until its conclusion), and to demand production by "COB today." I also said that I would refer your request to the lawyers in Redmond who handle such matters and would have them call you. That I have done and you should expect a call.

Your asserted justification for asking me more formally to articulate a basis for the privilege claim is thin, given that there is no document in evidence. I suspect that what you are doing is attempting to manufacture a record so that you may make something of this in the morning. I think this entire matter is, to coin a phrase, nothing more than a trial stunt, and I shall not facilitate it. Lest there be any lack of clarity in my position, here it is:

1. The document about which you inquire is not in evidence and was not offered in evidence.

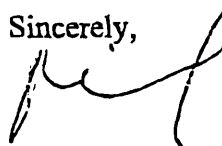
2. The questions Mr. Warden asked about how a *different* document (although one embedded, in a different form, in the document about which you now inquire) came to be in AOL's files were prompted by a foundation objection from your colleague, Mr. Boies. Mr. Warden was well within appropriate bounds of advocacy and the principles of evidence in seeking to ascertain whether the witness could assist in providing foundation for the document. He could not, and the document was not admitted.

3. I have stated our basis for asserting a privilege claim as to parts of the document, and you admitted when we spoke (a) that you may well have misread or misunderstood the document when you sent your initial letter this morning, and (b) that you had no basis to challenge my explanation as to the privileged nature of the redacted portions of the document. Your more recent letter does not alter the situation in any material respect.

4. To the extent that it implies that Mr. Warden had any knowledge as to the way in which DX 2533 came to be in AOL's files, your letter is unfounded and offensive. If you have some knowledge on that subject, please share it with me.

I shall be candid, John. I think you are fishing, and the sense of urgency reflected in your letters is a contrivance. If you believe you have *any* credible basis for challenging the privilege designations, proceed as you have done before – file a motion, give Microsoft the opportunity to respond and we shall let the Court decide.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Lacovara', with a stylized, flowing script.

Michael Lacovara